

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., PLATINUM  
MOTORS, INC., and MATTINGLY AUTO  
SALES, INC., individually and on behalf of  
other members of the general public similarly  
situated,

Plaintiffs,

v.

COX AUTOMOTIVE, INC., NEXTGEAR  
CAPITAL, INC. F/K/A DEALER SERVICES  
CORPORATION, successor by merger with  
Manheim Automotive Financial Services, Inc.,  
and JOHN WICK,

Defendants.

Case No. 1:14-cv-01589-TWP-DML

**NEXTGEAR CAPITAL, INC.’S OBJECTIONS TO MAGISTRATE JUDGE’S  
ORDER ON MOTION FOR PROTECTIVE ORDER AND  
REQUEST TO STAY DISCOVERY REGARDING SUBSET OF CLASS**

Pursuant to Rule 72(a) of the Federal Rules of Civil Procedure, Defendant NextGear Capital, Inc. (“NextGear”) respectfully objects to the Order on Motion for Protective Order entered by Magistrate Judge McVicker Lynch (the “MPO Order”) on October 5, 2017 [Doc. 250]. Rule 72(a) provides that parties may object to a magistrate’s order within fourteen days of receiving a copy of the order. “The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.” Fed. R. Civ. P. 72(a).

Currently pending before the Court are Defendants’ Motion to Modify Class Certification Order to Narrow Class (“Motion to Narrow”) [Docs. 237, 243] and Defendants’ Objections to Magistrate Judge’s Orders on Motions to Stay and Request to Stay Discovery Regarding Subset

of Class (“First Objections”) [Docs. 240, 245]. In these filings, Defendants have asked the Court to (1) exclude from the class certified by the Court dealers who have entered into written arbitration agreements and class action waivers that preclude participation in the class under clear federal law, and (2) relieve NextGear of any requirement to produce information regarding such dealers. The MPO Order denies NextGear’s request for a protective order as to additional discovery requests relating to these dealers and, thus, effectively requires NextGear to proceed with discovery as if the Court has already denied the Motion to Narrow and overruled the First Objections. NextGear’s motion for a protective order was merely intended to maintain a pause on discovery as to the dealers subject to arbitration and class action waiver provisions until the Court had an opportunity to rule on the Motion to Narrow.

For the reasons stated in Defendants’ Motion to Narrow and First Objections, NextGear respectfully requests that the Court overrule the Magistrate Judge’s MPO Order [Doc. 250] to the extent the MPO Order requires NextGear to produce information regarding dealers who signed a promissory note containing arbitration and class action waiver provisions. These are critical substantive rights for which NextGear has bargained in its contracts with dealers, and the Court cannot and should not disregard these contractual provisions. Defendants also request that the Court direct that compliance with the MPO Order be stayed until the Court has ruled on Defendants’ Motion to Narrow [Docs. 237, 243] and the parties have exhausted any related appeal rights.

Respectfully submitted, this 13th day of October, 2017.

s/ Tracey K. Ledbetter

Jason S. McCarter (*pro hac vice*)  
Tracey K. Ledbetter (*pro hac vice*)  
EVERSHEDS SUTHERLAND (US) LLP  
999 Peachtree Street, NE, Suite 2300  
Atlanta, GA 30309-3996  
(404) 853-8000  
(404) 853-8806 fax  
[jasonmccarter@eversheds-sutherland.com](mailto:jasonmccarter@eversheds-sutherland.com)  
[traceyledbetter@eversheds-sutherland.com](mailto:traceyledbetter@eversheds-sutherland.com)

David J. Jurkiewicz (18018-53)  
Paul D. Vink (23785-32)  
BOSE McKINNEY & EVANS LLP  
111 Monument Circle, Suite 2700  
Indianapolis, IN 46204  
(317) 684-5000  
(317) 684-5173 fax  
[djurkiewicz@boselaw.com](mailto:djurkiewicz@boselaw.com)  
[pvink@boselaw.com](mailto:pvink@boselaw.com)

*Attorneys for Defendants Cox Automotive,  
Inc., NextGear Capital, Inc. f/k/a Dealer  
Services Corporation, and John Wick*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served upon the following counsel of record via the Court's electronic service notification system, this 13th day of October, 2017:

Ryan D. Adams  
James M. Garner  
Matthew M. Coman  
Jacob A. Airey  
SHER GARNER CAHILL RICHTER  
KLEIN & HILBERT, L.L.C.  
[radams@shergarner.com](mailto:radams@shergarner.com)  
[jgarner@shergarner.com](mailto:jgarner@shergarner.com)  
[mcoman@shergarner.com](mailto:mcoman@shergarner.com)  
[jairey@shergarner.com](mailto:jairey@shergarner.com)

Cassie E. Felder  
THE CASSIE FELDER LAW FIRM  
[cassie@cassiefelderlaw.com](mailto:cassie@cassiefelderlaw.com)

Kathleen A. DeLaney  
DELANEY & DELANEY LLC  
[Kathleen@delaneylaw.net](mailto:Kathleen@delaneylaw.net)

Catherine E. Lasky  
Kerry A. Murphy  
LASKY MURPHY LLC  
[klasky@laskymurphy.com](mailto:klasky@laskymurphy.com)  
[kmurphy@laskymurphy.com](mailto:kmurphy@laskymurphy.com)

Gladstone N. Jones, III  
Lynn E. Swanson  
JONES, SWANSON, HUDDALL &  
GARRISON, LLC  
[gjones@jonesswanson.com](mailto:gjones@jonesswanson.com)  
[lswanson@jonesswanson.com](mailto:lswanson@jonesswanson.com)

Lisa Brener  
BRENER LAW FIRM, LLC  
[lbrener@brenerlawfirm.com](mailto:lbrener@brenerlawfirm.com)

s/ Tracey K. Ledbetter  
Tracey K. Ledbetter